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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Glenville, Clyde, and Weaverville, North Carolina)

and Tazewell, Tennessee)¹)

MB Docket No. 02-352

RM-10602

RM-10776

RM-10777

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 12, 2005

Released: October 14, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making* ("Notice")² issued in response to a petition for rule making filed by Glenville Radio Broadcasters ("Petitioner"), proposing the allotment of Channel 289A at Glenville, North Carolina, as the community's first local aural transmission service (RM-10602). Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. In response to the *Notice*, a counterproposal was filed by Georgia-Carolina Radiocasting Company, LLC ("GCRC"), proposing the allotment of Channel 290A at Clyde, North Carolina, as the community's first local aural transmission service (RM-10776). A counterproposal was also filed by The Stair Company ("Stair"), licensee of Station WCTU(FM), Tazewell, Tennessee, proposing the upgrade from Channel 290A to Channel 290C2 at Tazewell, the reallocation of Channel 290C2 from Tazewell to Weaverville, North Carolina, and the modification of Station WCTU(FM)'s license accordingly (RM-10777).³ Reply comments were filed by GCRC and Stair. Stair also filed an erratum to the reply comments. Further reply comments were filed by GCRC. After the comment period closed, Stair filed a "Reply," accompanied by a motion to accept, and a supplement.⁴ A "Joint Request for Approval of Universal Settlement" was filed by Glenville Radio Broadcasters, Stair Company, Inc. a/k/a the Stair Company, Georgia-Carolina Radiocasting Company, LLC, and Frank McCoy ("McCoy") (collectively referred to as "Joint Parties").

¹ The communities of Clyde and Weaverville, North Carolina, and Tazewell, Tennessee, have been added to the caption.

² *Glenville, North Carolina*, 17 FCC Rcd 22425 (MB 2002).

³ Both counterproposals were placed on *Public Notice* on August 26, 2003, Report No. 2624.

⁴ Stair's Reply is timely because it was filed prior to the closing of the reply period set forth in the *Public Notice* of the counterproposals in this proceeding. See *id.*

2. **Settlement.** On September 19, 2005, the Joint Parties filed a Request for Approval of Universal Settlement, requesting the dismissal of the Glenville, North Carolina petition and the Clyde, North Carolina counterproposal, the grant of the Weaverville, North Carolina counterproposal, and the withdrawal of McCoy's comments in MB Docket No. 05-191.⁵ They state that they have settled this case pursuant to the Commission's recently announced settlement window and that this is a complete and rule-compliant settlement because a *Notice of Proposed Rule Making* has been released and the comment date fell on or before June 14, 2005. Therefore, they claim, this is a universal settlement because there are no issues left unresolved and no remaining proposals that are mutually exclusive.

3. Consistent with the *Public Notice*⁶ announcing a 90-day settlement window for certain pending FM allotment proceedings, we will waive the provisions of Section 1.420(j) and grant the Joint Parties' Request for Approval of Universal Settlement.

4. We further find that the proposed upgrade, reallocation, and change of community of license for Station WCTU(FM) from Channel 290A at Tazewell, Tennessee, to Channel 290C2 at Weaverville, North Carolina, meet the requirements of Section 1.420(i) of the Commission's Rules and our policies on change of community of license. The reallocation would result in a preferential arrangement of allotments. The reallocation of Channel 290C2 to Weaverville would provide the community with its first local service, triggering priority (3).⁷ The retention of the channel at Tazewell would provide this community with its second local service, triggering priority (4). The reallocation would not deprive Tazewell of its sole local service because Station WNTT(AM) would remain licensed to the community. We also find that the Weaverville reallocation satisfies seven of the eight *Tuck* factors.⁸ Therefore, we deem it a sufficiently independent community deserving of a

⁵ Frank McCoy filed comments in MB Docket No. 05-191, attempting to raise an issue concerning Georgia-Carolina Company, LLC's apparent dilatory action in effectuating a prior change of community case. As part of the universal settlement McCoy requests the withdrawal of its comments in that docket. Our review of the comments and reply comments reveal that no possible issue of decisional significance has been raised by McCoy.

⁶ *Window Announced for Universal Settlements of Pending Rulemaking Proceedings to Amend FM Table of Allotments*, 20 FCC Rcd 10756 (MB 2005) ("Public Notice").

⁷ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Equal weight is given to priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

⁸ See *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951), *RKO General, Inc. (KFRC) ("KFRC")*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988). The Commission considers the following factors in determining a community's interdependence with a central city: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community's leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the small community has its own telephone book or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, libraries. *Tuck*, 3 FCC Rcd at 5378. The only factor not entirely

first local service preference.⁹

5. An engineering analysis has determined that Channel 290C2 can be reallocated to Weaverville in compliance with the Commission's minimum distance separation requirements with a site restriction of 27.1 kilometers (16.8 miles) northwest to avoid a short-spacing to the licensed site of Station WAGI-FM, Channel 287C, Gaffney, South Carolina. The reference coordinates for Channel 290C2 at Weaverville are 35-48-31 North Latitude and 82-49-37 West Longitude. In accordance with Section 1.420(i) of the Commission's Rules, we modify Station WCTU(FM)'s license to specify operation on Channel 290C2 at Weaverville, North Carolina, as its new community of license.

6. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and C.F.R. Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 28, 2005, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel</u>
Tazewell, Tennessee	--
Weaverville, North Carolina	290C2

7. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of The Stair Company for Station WCTU(FM), Tazewell, Tennessee,, IS MODIFIED to specify operation on Channel 290C2 at Weaverville, North Carolina, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may conducted in accordance with 47 C.F.R. Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

8. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l), The Stair Company, licensee of Station WCTU(FM), is required to submit a rule making fee in addition to the fee required for the application to effectuate the upgrade and change in community of license for Station WCTU(FM) at the time its Form 301 application is submitted.

present is (2) because Weaverville has no local newspaper, but it does have a website.

⁹ The reallocation would also create a loss area of 65,570 persons, encompassing an area 2,516 square kilometers. However, the loss of service is outweighed by a gain of service to 411,743 persons within an area of 8,560 square kilometers. The loss area is also well served by five or more reception services.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Report and Order* to the following:

The Stair Company
3223 West Wolf Valley Road
Clinton, Tennessee 37716
(Licensee of Station WCTU(FM))

10. IT IS FURTHER ORDERED, That the petition for rule making (RM-10602) filed by Glenville Radio Broadcasters proposing the allotment of Channel 289A at Glenville, North Carolina, IS DISMISSED.

11. IT IS FURTHER ORDERED, That the counterproposal (RM-10776) filed by Georgia-Carolina Radiocasting Company proposing the allotment of Channel 290A at Clyde, North Carolina, IS DISMISSED.

12. The Commission will send a copy of this *Report and Order* in a report to be sent to the Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. §801(a)(1)(A).

13. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

14. For further information concerning the above, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau